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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
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10 CARMEL GARCIA; M.Y. AND L.Y.,
11 minors by and through their guardian ad
12 litem VANESSA RUIZ; L.Y., a minor by
and through his guardian ad litem
FRANCISCA URIOSTEGUI,

13 Plaintiffs,

14 v.

15 YUBA COUNTY SHERIFF'S
16 DEPARTMENT; YUBA COUNTY
SHERIFF'S DEPUTIES DOES 1-5; CITY
17 OF VACAVILLE; and VACAVILLE
POLICE OFFICER DOES 6-10,,

18 Defendants.
19

No. 2:19-cv-2621 KJM DB

ORDER

20 On April 16, 2021, defendants filed a motion to compel and award sanctions. (ECF No.
21 37.) The motion is noticed for hearing before the undersigned on May 7, 2021, pursuant to Local
22 Rule 302(c)(1). Defendants' motion asserts a "complete failure to respond" by plaintiffs to the
23 discovery requests. (*Id.* at 3.) On May 2, 2021, plaintiffs filed an untimely opposition and an ex
24 parte application for leave to file a late opposition. (ECF Nos. 38 & 39.)

25 According to plaintiffs' own opposition, defendant City of Vacaville served plaintiffs with
26 discovery requests on "November 5, 2020," and plaintiffs were "not able to serve responses . . .
27 on or before . . . the deadline to do so[.]" (ECF No. 38 at 2.) In fact, plaintiffs assert that they
28 only finally "placed in the mail on April 25, 2021," the discovery responses. It is unclear if

1 plaintiffs' responses attempt to assert objections. See Richmark Corp. v. Timber Falling
2 Consultants, 959 F.2d 1468, 1473 (9th Cir. 1992) ("It is well established that a failure to object to
3 discovery requests within the time required constitutes a waiver of any objection."); Davis v.
4 Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981) ("Generally, in the absence of an extension of time
5 or good cause, the failure to object to interrogatories within the time fixed by Rule 33 . . .
6 constitutes a waiver of any objection."); Safeco Ins. Co. of America v. Rawstrom, 183 F.R.D.
7 668, 671 (C.D. Cal. 1998) ("Objections not interposed in a timely initial response may not be held
8 in reserve and interposed after the period allowed for response[.]").

9 Plaintiffs assert that the undersigned should not hear defendants' motion because
10 defendants failed to attempt to file a Joint Statement. (ECF No. 38 at 3.) However, Local Rule
11 251(e) provides that a Joint Statement is not required "when there has been a complete and total
12 failure to respond to a discovery request[.]" Moreover, defense counsel has provided a copy of a
13 letter dated January 4, 2021, addressed to plaintiffs' counsel in which defense counsel outlined
14 the pending discovery dispute, provided plaintiffs a week to provide discovery responses without
15 objection before filing a motion to compel, and stated that counsel was "available to discuss by
16 phone," the pending dispute. (ECF No. 37-1 at 54.)

17 According to defense counsel's declaration—filed in support of the motion to compel—
18 defense counsel "attempted to meet and confer with Plaintiffs' counsel" on several occasions.
19 (Bernstein Decl. (ECF No. 37-1) at 1.) Between January 12, 2021, and January 25, 2021, defense
20 counsel twice called plaintiffs' counsel, those calls went unanswered, and the automated message
21 stated that the voicemail was full and unable to accept new recordings. (Id. at 9.) Defense
22 counsel again attempted to reach plaintiffs' counsel by phone between April 12 and April 15,
23 2021, but was unsuccessful. (Id. at 2-3.) Defense counsel then emailed plaintiffs' counsel on
24 April 15, 2021, "regarding their failure to serve responses," but plaintiffs' counsel did not respond
25 prior the motion to compel being filed on April 16, 2021. (Id. at 3.)

26 With respect to defendants' request for monetary sanctions, "[t]he discovery process in
27 theory should be cooperative and largely unsupervised by the district court." Sali v. Corona
28 Regional Medical Center, 884 F.3d 1218, 1219 (9th Cir. 2018). "When that cooperation breaks

1 down, the district court has broad discretion to regulate discovery conduct and, if needed, impose
2 a wide array of sanctions.” Infanzon v. Allstate Insurance Company, 335 F.R.D. 305, 311 (C.D.
3 Cal. 2020). When the court grants a motion to compel it must “after giving an opportunity to be
4 heard,” award “reasonable expenses incurred in making the motion, including attorney’s fees,”
5 unless the “opposing party’s position was ‘substantially justified’ or that ‘other circumstances
6 make an award of expenses unjust.’” Id. (quoting Fed. R. Civ. P. 37(a)(5)(A)). “The burden of
7 establishing this substantial justification or special circumstances rests on the party being
8 sanctioned.” (Id.)

9 Plaintiffs argue that they were substantially justified “due to . . . not having access to the
10 internet and in general being unable to adequately communicate with Plaintiffs’ counsel to
11 convey the necessary information to complete the discovery propounded on them” because
12 plaintiffs “live in a very rural area in Northern California[.]” (ECF No. 38 at 6.) This
13 justification, however, does not address what appears to be plaintiffs’ counsel’s failure to timely
14 communicate with defense counsel about the outstanding discovery, to seek and obtain extensions
15 of time to respond, to timely file briefing, etc. Moreover, it is unclear even as of the date of this
16 order if plaintiffs have provided appropriate responses to the outstanding discovery.

17 In light of plaintiffs’ untimely responses and briefing, the undersigned will continue the
18 hearing of defendants’ motion to allow defendants time to analyze any discovery produced and
19 update the court as to the current nature of the discovery dispute.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. The May 7, 2021 hearing of defendants’ motion to compel (ECF No. 37) is continued
22 to **May 28, 2021**;
- 23 2. On or before **May 14, 2021**, defendants shall file a supplemental memorandum; and
- 24 3. On or before **May 21, 2021**, plaintiffs shall file a reply.

25 Dated: May 3, 2021

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28 DB/orders/orders.civil/garcia2621.mtc.cont.ord


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE